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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 MARTIN VOGEL,

14 Plaintiff,

15 vs.

16
17 PAYAN FOOD SERVICES, INC.)
18 dba TACOS y MARISCOS)
19 SINALOA; CHENG CHAI LEE,)
20 TRUSTEE of the LEE FAMILY)
21 TRUST 140925; JIN YEN LEE,)
22 TRUSTEE of the LEE FAMILY)
23 TRUST 140925,

24 Defendants.

No.

Plaintiff's Complaint

I. SUMMARY

1
2 1. This is a civil rights action by plaintiff Martin Vogel (referred to
3 hereinafter as “Vogel”) for discrimination at the building, structure, facility,
4 complex, property, land, development, and/or surrounding business complex
5 known as:

6 Tacos y Mariscos Sinaloa
7 408 South Brookhurst Street
8 Anaheim, CA 92804
9 (referred to hereinafter as “the Restaurant”)

10 2. Vogel seeks damages, injunctive and declaratory relief, attorney fees
11 and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§
12 12101 et seq.) and related California statutes against: Payan Food Services, Inc.
13 dba Tacos y Mariscos Sinaloa; Cheng Chai Lee, Trustee of the Lee Family Trust
14 140925; and, Jin Yen Lee, Trustee of the Lee Family Trust 140925 (hereinafter
15 collectively referred to as “Tacos y Mariscos Sinaloa”).

16 II. JURISDICTION

17 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343
18 for ADA claims.

19 4. Supplemental jurisdiction for claims brought under parallel California
20 law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C.
21 § 1367.

22 5. Vogel’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

23 III. VENUE

24 6. All actions complained of herein take place within the jurisdiction of
25 the United States District Court, Central District of California, and venue is
26 invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Tacos y Mariscos Sinaloa owns, operates, and/or leases the Restaurant, and consists of a person (or persons), firm, and/or corporation.

8. Vogel is a T-3 paraplegic as a result of a motorcycle accident in 1986 which left him unable to walk or stand and requiring the use of a wheelchair when traveling about in public. Consequently, Vogel is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Restaurant is an establishment serving food and drink, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. While in the area, Vogel visited the Restaurant to grab a bite to eat and encountered barriers (both physical and intangible) that interfered with—if not outright denied—his ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Vogel, the barriers at the Restaurant included, but are not limited to, the following:

- The disabled parking spaces have slopes and/or cross slopes that are too steep, due at least partially to an encroaching built-up curb ramp. Without a level parking space, it is difficult for Vogel to unload/transfer from a vehicle as his wheelchair rolls and/or a lift’s platform cannot sit level;
- There is no space designated as being van accessible, thus making it difficult for Vogel to determine which spaces are intended for and will accommodate vans;
- The access aisle has slopes and/or cross slopes that are too steep, due mainly to an encroaching built-up curb ramp. Without a level access

1 aisle, it is difficult for Vogel to unload/transfer from a vehicle as his
2 wheelchair rolls and/or a lift's platform cannot sit level;

- 3 • There is no International Symbol of Accessibility mounted at the
4 entrance that would indicate to Vogel that the Restaurant is intended
5 to be accessible to him;
- 6 • The sign on the men's restroom door is incorrect, thus making it
7 difficult for Vogel to determine if the facility is intended to be
8 accessible to him;
- 9 • There is no signage at the strike side of the men's restroom door that
10 would indicate to Vogel that the facility is intended to be accessible
11 to him;
- 12 • The water closet stall door is not self-closing, thus making it difficult
13 for Vogel to shut;
- 14 • The water closet stall door lock is mounted too high, thus making it
15 difficult for Vogel to reach and use;
- 16 • There is no handle on the interior of the water closet stall door, thus
17 making it difficult for Vogel to pull the door shut;
- 18 • The disposable seat cover dispenser is mounted too high, thus making
19 it difficult for Vogel to reach and use;
- 20 • The water closet obstructs the clear space required to access the
21 disposable seat cover dispenser, thus making the dispenser difficult
22 for Vogel to reach and use;
- 23 • The middle mounting bracket on the side grab bar obstructs its use,
24 thus making it difficult for Vogel to transfer from his wheelchair to
25 the water closet;
- 26 • The toilet tissue dispenser is mounted too high, thus making it difficult
27 for Vogel to reach and use;

- The toilet tissue dispenser is mounted too far from the front of the water closet, thus making it difficult for Vogel to reach and use;
- The pipes beneath the lavatories are incompletely wrapped, thus causing Vogel to risk burning his legs when washing his hands; and,
- The paper towel dispenser is mounted too high, thus making it difficult for Vogel to reach and use.

11. There is a water closet stall provided that is intended to be accessible to the disabled, however, it is an “ambulatory accessible compartment.” Facilities may only have an “ambulatory accessible compartment” if there is already a standard side-transfer compartment provided and there are at least six or more total compartments – such is not the case at the Restaurant, therefore:

- There is insufficient clear floor space within the water closet stall, thus making it difficult – if not impossible – for Vogel to enter, maneuver within and transfer to the water closet;
- There is insufficient clear space at the water closet, thus making it difficult for Vogel to transfer from his wheelchair to the water closet;
- The water closet is mounted too far from the closest side wall, thus making it difficult for Vogel to transfer from his wheelchair; and,
- The flush valve is not located on the “wide” side of the water closet, thus making it difficult for Vogel to reach and use.

These barriers prevented Vogel from enjoying full and equal access.

12. Vogel was also deterred from visiting the Restaurant because he knew that the Restaurant’s goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Restaurant because of the future threats of injury created by these barriers.

13. Vogel also encountered barriers at the Restaurant, which violate state and federal law, but were unrelated to his disability. Nothing within this complaint,

1 however, should be construed as an allegation that Vogel is seeking to remove
2 barriers unrelated to his disability.

3 14. Tacos y Mariscos Sinaloa knew that these elements and areas of the
4 Restaurant were inaccessible, violate state and federal law, and interfere with (or
5 deny) access to the physically disabled. Moreover, Tacos y Mariscos Sinaloa has
6 the financial resources to remove these barriers from the Restaurant (without much
7 difficulty or expense), and make the Restaurant accessible to the physically
8 disabled. To date, however, Tacos y Mariscos Sinaloa refuses to either remove
9 those barriers or seek an unreasonable hardship exemption to excuse non-
10 compliance.

11 15. At all relevant times, Tacos y Mariscos Sinaloa has possessed and
12 enjoyed sufficient control and authority to modify the Restaurant to remove
13 impediments to wheelchair access and to comply with the Americans with
14 Disabilities Act Accessibility Guidelines and Title 24 regulations. Tacos y
15 Mariscos Sinaloa has not removed such impediments and has not modified the
16 Restaurant to conform to accessibility standards.

17 VI. FIRST CLAIM

18 **Americans with Disabilities Act of 1990**

19 Denial of “Full and Equal” Enjoyment and Use

20 16. Vogel incorporates the allegations contained in paragraphs 1 through
21 15 for this claim.

22 17. Title III of the ADA holds as a “general rule” that no individual shall
23 be discriminated against on the basis of disability in the full and equal enjoyment
24 (or use) of goods, services, facilities, privileges, and accommodations offered by
25 any person who owns, operates, or leases a place of public accommodation. 42
26 U.S.C. § 12182(a).

27 18. Tacos y Mariscos Sinaloa discriminated against Vogel by denying
28 “full and equal enjoyment” and use of the goods, services, facilities, privileges or

1 accommodations of the Restaurant during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 19. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable”
7 is defined as “easily accomplishable and able to be carried out without much
8 difficulty or expense.” *Id.* § 12181(9).

9 20. When an entity can demonstrate that removal of a barrier is not readily
10 achievable, a failure to make goods, services, facilities, or accommodations
11 available through alternative methods is also specifically prohibited if these
12 methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 21. Here, Vogel alleges that Tacos y Mariscos Sinaloa can easily remove
14 the architectural barriers at Restaurant without much difficulty or expense, and that
15 Tacos y Mariscos Sinaloa violated the ADA by failing to remove those barriers,
16 when it was readily achievable to do so.

17 22. In the alternative, if it was not “readily achievable” for Tacos y
18 Mariscos Sinaloa to remove the Restaurant’s barriers, then Tacos y Mariscos
19 Sinaloa violated the ADA by failing to make the required services available
20 through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 23. On information and belief, the Restaurant was designed or
23 constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 24. The ADA also prohibits designing and constructing facilities for first
26 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,
27 individuals with disabilities when it was structurally practicable to do so. 42 U.S.C.
28 § 12183(a)(1).

25. Here, Tacos y Mariscos Sinaloa violated the ADA by designing or constructing (or both) the Restaurant in a manner that was not readily accessible to the physically disabled public—including Vogel—when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. On information and belief, the Restaurant was modified after January 26, 1992, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Tacos y Mariscos Sinaloa altered the Restaurant in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Vogel—to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Tacos y Mariscos Sinaloa violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Restaurant, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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1 thousand dollars (\$1,000), declaratory relief, and any other remedy available under
2 California Civil Code § 54.3.

3 39. He also seeks to enjoin Tacos y Mariscos Sinaloa from violating the
4 Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover
5 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and
6 55.

7 **VIII. THIRD CLAIM**

8 **Unruh Civil Rights Act**

9 40. Vogel incorporates the allegations contained in paragraphs 1 through
10 30 for this claim.

11 41. California Civil Code § 51 states, in part, that: All persons within the
12 jurisdiction of this state are entitled to the full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishments of every
14 kind whatsoever.

15 42. California Civil Code § 51.5 also states, in part, that: No business
16 establishment of any kind whatsoever shall discriminate against any person in this
17 state because of the disability of the person.

18 43. California Civil Code § 51(f) specifically incorporates (by reference)
19 an individual's rights under the ADA into the Unruh Act.

20 44. Tacos y Mariscos Sinaloa's aforementioned acts and omissions denied
21 the physically disabled public—including Vogel—full and equal accommodations,
22 advantages, facilities, privileges and services in a business establishment (because
23 of their physical disability).

24 45. These acts and omissions (including the ones that violate the ADA)
25 denied, aided or incited a denial, or discriminated against Vogel by violating the
26 Unruh Act.

X. PRAYER FOR RELIEF

WHEREFORE, Vogel prays judgment against Tacos y Mariscos Sinaloa for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Tacos y Mariscos Sinaloa violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.

DATED: December 31, 2015 DISABLED ADVOCACY GROUP, APLC

/s/ Scottlynn J Hubbard IV

SCOTTLYNN J HUBBARD IV

Attorney for Plaintiff

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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